

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1149 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

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NAVAL LAXMANBHAI VADHARA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1149 of 2001
MR DJ CHAUHAN for Petitioner No. 1
Mr. HL Jani, AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/07/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Chauhan for the petitioner and Mr. Jani, learned AGP for the respondent State. In this petition, the petitioner has challenged the impugned order of detention dated 19th December, 2000 passed by the detaining authority under section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("the PASA Act" for short). The grounds of detention have been communicated to the petitioner under section 9(1) of the PASA Act and the petitioner has been detained at Sabarmati Jail, Ahmedabad as Class II Detenu.

As per the grounds of detention, the petitioner has been involved in four registered offences and the date of the last offence registered against the detenu is 27th October, 2000. Two unregistered offences dated 1st October, 2000 and 12th August, 2000 have been noted by the detaining authority as per the grounds of detention. The petitioner has been considered to be the dangerous person as defined under section 2(c) of the PASA Act. The statements of the secret witnesses as recorded on 10.12.2000 were verified by the detaining authority on 12.12.2000. The respondents have not filed any reply to the present petition.

2. Learned advocate Mr. Chauhan has raised various contentions while challenging the impugned order of detention. However, according to him, one or two contentions are enough for setting aside the impugned order of detention. He has submitted that the petitioner had made representation against the detention on 17th January, 2001 which was received by the respondent authorities on 19th January, 2001 and it was decided on 22nd January, 2001 and, therefore, there was delay of about three days in deciding the representation. The next contention raised by Mr. Chauhan is to the effect that documents supplied to the petitioners at page 3, 5, 55, 57 and 58 are not legible. Therefore, the petitioner by representation at page 89, demanded for supply of legible copies to the respondent Government, by Registered Post A.D. White slip has been produced on record at page no. 91. Similarly original receipt of acknowledgment is also on record at annexure "F" as per which the representation was received on 19.1.2001. He has submitted that the respondents have not given any reply to his representation for supply of legible copies of the said illegible documents and legible copies of those documents were not supplied to the petitioner. He has submitted that it amounts to non communication of grounds which has deprived the petitioner of his right to make an effective representation under Article 22(5) of the Constitution of India.

Learned AGP Mr. Jani appearing for the respondents has submitted that the representation made by the petitioner was received by the respondents on 20.1.2001 and decided on 22.1.2001. He has submitted that 20.1.2001 was Saturday and 21st January, 2001 was Sunday and, therefore, there was no delay in deciding the said representation by the State Government. He himself has verified the documents referred to by the petitioner as illegible and has found the same to be not properly legible. He has submitted that no reply has been given

by any authority to the petitioner for supply of legible copies of the said documents. However, according to him, there were compelling circumstances for the detaining authority to detain the petitioner under the PASA Act and, therefore, subjective satisfaction of the detaining authority is established from the record and, therefore, this court should not interfere with the impugned order of detention.

I have considered the submissions made by the learned advocates for the parties. Looking to the facts and original record, relevant page 3, 5, 55, 57, 58, they are not legible copies supplied to the petitioner. Therefore, the petitioner requested for supply of legible copies of those documents vide representation as aforesaid. However, inspite of his specific demand for supply of legible copies of those documents, the petitioner has not been supplied legible copies of those documents. No reply has been given by the authority whether the legible documents have been supplied or not. Therefore, demand made by the petitioner for supply of legible copies of those documents has not been attended by the respondent authorities. According to my view, it amounts to non communication of grounds depriving the petitioner of his right to make an effective representation against the impugned order of detention, under Article 22(5) of the Constitution of India. There is also delay in deciding the representation made by the petitioner. In 1988(2) GLR 1336, 1991(1) GLR 421 and 1993(2) GLR 1659, this Court has considered this question and held that the grounds of detention must have to be communicated to the detenu and where the document or some of it is illegible, there is no communication of grounds and the order of detention would get vitiated. Relevant observations made in case of Vikramsinh Pravinsinh Rana reported in 1988(2) GLR 1336 are as under:

"3. The petitioners have contended that they have been supplied the copy of the judgment delivered by the court of sessions, Amreli in Sessions Case No. 40 of 1985 but some of the pages of the said judgment are not legible at all and, therefore, that amounts to non communication of the grounds and that also adversely affected the right of the petitioners' making representation to the concerned authorities. In the affidavit in reply, concerned Magistrate has stated that the copies are legible. We have ourselves looked into the copies of the judgment supplied to the detenu and we find that some of the pages are not legible at all. For example,

pages 16 and 42 of the said judgment are not legible. When some of the pages of the judgment are not legible, that amounts to non communication of grounds and, therefore, the orders of detention and the continued detention are both vitiated. It is difficult to accept the submission of Mr. G.D. Bhatt the learned Addl. Public Prosecutor that Sec. 6 of the PASA Act can be pressed into service and the orders of detention can be sustained on other grounds. We find it difficult to agree with Mr. Bhatt that sec. 6 of the PASA Act can be pressed into service in a case like the present one. Section 6 of the PASA Act comes into play only when the grounds are communicated but one or more of the grounds are found to be vague, non-existent etc. When there is non communication of some of the grounds to the detenu, the question of invoking of the provisions of sec. 6 of the PASA Act does not arise. When some of the grounds are not communicated, there is violation of Art. 22(5) of the Constitution of India and, therefore, the detention becomes unconstitutional. We are supported with the view which we are inclined to take by the decision of the Division Bench of this Court reported in (Bhimdevsinh Dilavarsinh Darbar v. State) Special Criminal Application No. 186 of 1987 (Coram : D.H. Shukla & P.M. Chauhan, JJ) on 5.8.1987. In that case also, it was a question of non communication of the grounds and the submission made on behalf of the State Based on section 6 of the PASA Act was rejected. The Division Bench of this Court referred to a judgment of the Division Bench of the Bombay High Court in the case of Vhandra Sheakhar Ojha v. A.K. Karnik and Ors. reported in 1982 Cri. L.J. 1642 where such a contention was raised on behalf of the State and rejected. The Division Bench of the Bombay High Court in that case relied upon the decision of the Supreme Court in the case of Kamla Kanhaiyalal Khushalani v. State of Maharashtra, reported in AIR 1981 SC 814, where the Supreme Court held that the documents and the material relied upon in the order of detention form an integral part of the grounds and must be supplied to the detenu *pari passu* the grounds of detention and if the documents and material are even supplied late, then the detenu is deprived of an opportunity of making an effective representation against the order of detention. The Bombay High Court

observed that before the order of detention can be supported the constitutional safeguards must be strictly observed. In the case of Bhupinder Singh versus Union of India and Ors., 1987 (2) SCC 234, the detention was set aside on the ground that the right of making representation guaranteed under Art. 22 of the COnstitution was decided."

In view of the observations made by the division bench and also looking to the facts of the case, as per my view, non supply of the legible documents would amount to non communication of grounds and it would vitiate the impugned order of detention which has adversely affected the right of the petitioner under Art. 22(5) of the Constitution of India. Therefore, according to my opinion, the impugned order of detention is liable to be quashed and set aside.

In the result, this petition is allowed. Impugned order of detention dated 19th December, 2000 passed by the detaining authority is quashed and set aside. The petitioner detenu Naval Laxmanbhai Vadhara who has been detained in Sabarmati Jail at Ahmedabad is ordered to be released forthwith if he is not required in any other case. Rule is made absolute accordingly with no order as to costs. DSP.

11.7.2001. (H.K.Rathod,J.)
Vyas